

CENTER FOR DISABILITY ACCESS
Ray Ballister Jr., Esq., SBN 111282
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Dennis Price, Esq., SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg @ potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Luis Villegas

Plaintiff,

v.

Diamond Parking Services, LLC,
a Washington Limited Liability
Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief** For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Luis Villegas complains of Defendants Diamond Parking Services, LLC, a Washington Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property owners, business operators, lessors and/or lessees for the Pay Parking Lot s

1 (“Parking Lot”) located at or about 820 N. Parton Street, Santa Ana,
2 California.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for
9 the events herein alleged, or is a necessary party for obtaining appropriate
10 relief. Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 4. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to pendant jurisdiction, an attendant and related cause of
19 action, arising from the same nucleus of operative facts and arising out of the
20 same transactions, is also brought under California’s Unruh Civil Rights Act,
21 which act expressly incorporates the Americans with Disabilities Act.

22 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 7. The Plaintiff went to the Parking Lot in January 2014, to park.

28 8. The Parking Lot is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 9. Paths of travel are one of the facilities, privileges and advantages
3 offered by defendants to their customers at the Parking Lot.

4 10. The Parking Lot is a self-service lot. It requires a patron to place money
5 into a metal box near the perimeter of the Parking Lot. Unfortunately,
6 defendants have placed the metal box in a location that is inaccessible to
7 wheelchair users. There is no curb cut that gives a wheelchair user access to
8 the area where payment is made. As a result, plaintiff was unable to pay for a
9 parking space and he was unable to park in the lot.

10 11. The plaintiff personally encountered this problem. This inaccessible
11 path of travel in the Parking Lot denied the plaintiff full and equal access and
12 caused him difficulty.

13 12. The defendants have failed to maintain in working and useable
14 condition those features required to provide ready access to persons with
15 disabilities.

16 13. The plaintiff is often in this area of Orange County. The Parking Lot is
17 conveniently located and plaintiff would like to patronize it in the future. In
18 the meantime, the plaintiff will continue to be discriminated against, and has
19 been deterred since his initial visit because of his knowledge of the barrier.

20 14. Given the obvious and blatant violations, the plaintiff alleges, on
21 information and belief, that there are other violations and barriers on the site
22 that relate to his disability. Plaintiff will amend the complaint, to provide
23 proper notice regarding the scope of this lawsuit, once he conducts a site
24 inspection. However, please be on notice that the plaintiff seeks to have all
25 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
26 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
27 he can sue to have all barriers that relate to his disability removed regardless
28 of whether he personally encountered them).

1 15. Additionally, on information and belief, the plaintiff alleges that the
 2 failure to remove these barriers was intentional because: (1) these particular
 3 barriers are intuitive and obvious; (2) the defendants exercised control and
 4 dominion over the conditions at this location and, therefore, the lack of
 5 accessible facilities was not an “accident” because had the defendants
 6 intended any other configuration, they had the means and ability to make the
 7 change.

8
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 11 defendants (42 U.S.C. section 12101, et seq.)

12 16. Plaintiff repleads and incorporates by reference, as if fully set forth
 13 again herein, the allegations contained in all prior paragraphs of this
 14 complaint.

15 17. Under the ADA, it is an act of discrimination to fail to ensure that the
 16 privileges, advantages, accommodations, facilities, goods and services of any
 17 place of public accommodation is offered on a full and equal basis by anyone
 18 who owns, leases, or operates a place of public accommodation. See 42
 19 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,
 21 or procedures, when such modifications are necessary to afford
 22 goods, services, facilities, privileges, advantages, or
 23 accommodations to individuals with disabilities, unless the
 24 accommodation would work a fundamental alteration of those
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,

Appendix "D."

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

18. There must be an accessible path of travel that connects all buildings, elements and spaces on the same site. 1991 Standards § 4.3.2. To be considered an accessible route, there cannot be a stair or step. 1991 Standards § 4.3.8. Any such change in level measuring greater than ½ inch must have a ramp or lift. *Id.* 2010 Standards § 303.4.

19. Here, the unramped step leading from the parking spaces to the payment area of the Parking Lot is a violation of the ADA.

20. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

22. Given its location and options, the Parking Lot is a business that the plaintiff will continue to desire to patronize but he has been and will continue to be discriminated against due to the lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
 3 51-53)

4 23. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint.

7 24. Because the defendants violated the plaintiffs' rights under the ADA,
 8 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
 9 Code § 51(f), 52(a).)

10 25. Because the violation of the Unruh Civil Rights Act resulted in
 11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
 12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
 13 55.56(a)-(c).)

14
 15 **PRAYER:**

16 Wherefore, Plaintiff prays that this court award damages and provide
 17 relief as follows:

18 1. For injunctive relief, compelling defendants to comply with the
 19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 20 Plaintiffs are not invoking section 55 of the California Civil Code and is not
 21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act which damages provide for
 23 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3
4 Dated: March 10, 2015

CENTER FOR DISABILITY ACCESS

5
6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28